

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.1750 OF 2021

BETWEEN:

SRI NARAYANASWAMY @ CHINNODU
@ CHIKKU
S/O NANJUNDAPPA
AGED ABOUT 23 YEARS
R/AT CHUNCHADENAHALLI VILLAGE
VOKKALERI HOBLI
KOLAR DISTRICT - 563130.

...APPELLANT

(BY SRI. NANJUNDA GOWDA M R., ADVOCATE (PH))

AND:

STATE OF KARNATAKA BY
KOLAR RURAL POLICE, KOLAR
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BENGALURU - 560001.

...RESPONDENT

(BY SRI.B.LAKSHMAN., HCGP (PH))

THIS CRL.A IS FILED U/S 374(2) CR.PC BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE JUDGMENT, ORDER AND ORDER REGARDING SENTENCE DATED 29.10.2021 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-1 (POCSO) KOLAR IN S.C.NO.27/2018, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 376 OF IPC AND SEC 6 OF POCSO ACT, AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 01.12.2025 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

The appellant has preferred this appeal against the judgment of conviction and order on sentence dated 29.10.2021 passed by the Additional District & Sessions Judge, FTSC-I (POCSO), Kolar, in S.C.No.27/2018.

2. For the sake of convenience, the parties herein are referred as per their rank before the trial Court.

3. The brief facts leading to this appeal are that the Circle Inspector, Kolar Rural Police, Kolar, filed the charge sheet against the accused for the offences punishable under Sections 376, 506 of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act', for short). It is the case of the prosecution that, the victim girl aged about 13 years, was studying in 8th standard in Government High School, Arabikotthanuru village. When the victim was going to School, accused used to follow her and talk with familiarly with her. CW1, CW3 and CW4 advised the accused not to follow the victim girl. Despite of it,

about 7 to 8 months ago, when the victim while returning from school, alighted the bus at Chunchadenahalli gate and was walking towards home, at that time accused met her and told that he was in love with her and further threatened that, if she does not cooperate with him, he will kill her and her parents. He took her to a nearby eucalyptus grove of CW6-Krishnappa, removed her clothes and committed rape on her. After the act, accused threatened the victim stating that if she reveals the same to anybody he will kill her. Thereafter, on the next day also after the school when the victim was returning home, at the same place, accused threatened the victim, took her to the same eucalyptus grove of CW6 and committed aggravated penetrative sexual assault, due to which CW2/victim became pregnant.

4. It is further case of the prosecution that the victim complained of stomach pain, after which her grandmother/CW1 took her to SNR hospital, Kolar. The Doctor, after the examination, revealed that victim was 7 months pregnant. CW1 enquired the victim and came to know that accused had committed rape on her while walking back home from school and made her pregnant, and further threatened her not to reveal the incident to anybody, for which she filed complaint

before the police as per Ex.P1 on 30.11.2017. Based on the complaint, Kolar Rural Police registered the case in Crime No.510/2017. The Investigating Officer arrested the accused, recorded the statements of witnesses and statement of the victim as required under Section 164 of Cr.P.C through the Magistrate. The victim and accused were sent for medical examination. The Investigating Officer has conducted the mahazars, collected blood samples of the accused, victim and her child in the presence of court through Doctor for DNA test, collected the school documents regarding date of birth of the victim, collected FSL and DNA report. After completion of investigation, the Investigating Officer has filed the charge sheet against the accused for the aforesaid offence. The accused is in Judicial Custody.

5. After filing of the charge sheet, the court has taken cognizance with respect to the aforesaid offences, and copies of the police papers have been furnished to the accused in compliance of Section 207 of Cr.P.C. After hearing, charges were framed and read over and explained to the accused in the language known to him. The accused pleaded not guilty and claimed to be tried and as such, the trial was fixed.

6. The prosecution in order to prove their case, got examined totally 23 witnesses as PW1 to PW23 and got marked 21 documents as Ex.P1 to Ex.P21. On completion of the prosecution evidence, statement of accused was recorded as contemplated under Section 313 of Cr.P.C. The accused has not chosen to lead any defence evidence on his behalf.

7. After hearing both the parties, the Trial Court has convicted the accused for the offences punishable under Section 376 of IPC and Section 6 of POCSO Act and acquitted the accused for the offence punishable under Section 506 of IPC. The Trial Court sentenced the accused to undergo rigorous imprisonment for a period of ten (10) years with fine of Rs.10,000/- and in default of payment of fine, he shall further undergo simple imprisonment for a period of three months. Since the sentence is awarded for the offence punishable under Section 6 of the POCSO Act, sentence is not passed for the offence punishable under Section 376 of IPC. Further, the Trial Court ordered that the period spent by the accused as an under-trial prisoner shall be given set off under Section 428 of Cr.P.C against the substantive sentence of imprisonment imposed. Being aggrieved by the said judgment

of conviction and sentence, the appellant has preferred this appeal.

8. Learned Counsel Sri.M.R.Nanjunda Gowda, appearing for the appellant submits that the impugned judgment of conviction and order on sentence passed by the Trial Court for the offence punishable under section 6 of POCSO Act is illegal, improper, perverse and is opposed to law, facts and probabilities of the case and evidence on record. The learned Sessions Judge failed to record the findings regarding question of reality and credibility of the witnesses and failed to take the other attending circumstances, which is normally expected to be considered. The learned Sessions Judge resorted to unfounded surmises and conjectures, when there is no such evidence on record. The Trial Court has not given any cogent, clinching and convincing reason for convicting the appellant. The learned Sessions Judge committed grave error in relying upon the evidence of PW1-Lakshmamma, who is the grandmother of victim. In her evidence she has deposed that, the victim girl was residing with her along with her son and daughter-in-law. That the victim was studying in 8th standard at High School in Arabikotthanuru and she used to walk to Chunchadenahalli Gate and from there she used to catch the

bus. About an year ago, she had visited the house of her elder son at Hosuru. At that time, her elder son Nagaraja informed her over phone about the victim girl complaining stomach pain. She returned home and enquired with the victim regarding her monthly cycle for which the victim said that it was irregular. Hence, she took the victim to the Kolar Government Hospital, where Doctor examined the victim and told that victim is 5 months pregnant. She enquired the victim, the victim revealed that the appellant is root cause for it. Thereafter, she filed the complaint before police which is marked as Ex.P1. Police visited the spot and conducted spot mahazar at the place told by the victim which is marked as Ex.P2. The victim was shifted to observation room, thereafter, the victim was shifted to Government Hospital at K.G.F., where she gave birth to a boy baby.

9. It is further submitted that in the cross-examination of PW1, she admits that the victim used to go to the school together with her classmates. She does not know who drafted the complaint and where and what was written in it. She affixed her signature near Prabha Talkies, Kolar. Along with her, the victim was there. She does not know at what time she lodged the complaint. She further states that she has not got the

victim admitted to the school, the parents of the victim have admitted her to the school and she does not know the date of birth of the victim. It is further admitted that the victim has not revealed anything to her regarding the alleged act. She has also not disclosed the date, month and place of occurrence and has also not checked the body of the victim. She further deposed that the parents of the victim used to keep watch on the victim. Though the victim accompanied the complainant, the police have not enquired the victim and they have not sent her to the Hospital. The police has not collected better evidence from the victim. She further admits that she does not know the contents of Ex.P2 and the persons who have attested their signatures to the spot mahazar. After lodging the complaint, she has not enquired the details of the victim at Arabikotthanuru High School, they have also not enquired with the boy and girl who were traveling with the victim every day to the school. She further admits that she does not know when the monthly cycle of the victim had stopped. The conduct of this witness is strange, unacceptable and unreliable and also most artificial. If she was pregnant for 7 months, normally there will be a bulge in the abdomen, when that is not observed by the grandmother of the victim and parents of the victim,

literally it creates serious doubt and goes to the root of the matter. Hence, her evidence is not cogent, corroborated and same is not acceptable.

10. It is further submitted that the learned Sessions Judge committed grave error in relying upon the evidence of PW2-victim. In her evidence, she stated that she knows the appellant and her date of birth is 03-02-2004. In the year 2017 she was studying in 8th standard in Arabhikotthanuru High School. She was going to school by walk upto Chunchadenahalli gate and from there, by a bus. About 1 year 9 months ago while she was returning home from the school and alighted bus at the gate, at that time, the appellant came and dragged her to a nearby eucalyptus grove and asked her to remove her clothes for which she refused, the appellant threatened her, he will kill her if she reveals about this incident to anybody. After 2-3 months the appellant committed intercourse on her in the same manner and at the same place. She was suffering from stomach pain, she informed her mother, her grandmother was called from Hosuru and after enquiry, the victim revealed about the incident. On 30.12.2017, she was taken to SNR Hospital, Kolar. The Doctor examined her. On 03.12.2017, the police went to her house then she revealed the same to the police and

has shown the place of occurrence. The police drew mahazar as per Ex.P2 and she affixed her signature as Ex.P2(A). Then she was taken to SNR Hospital, Kolar on 12.02.2018. After 10 days, she gave birth to a boy child. Her blood was collected in the court and identification form is marked as Ex.P3. In the cross-examination, the victim admits that she got admitted in the High School at Arabikotthanuru, she, two girls and five boys used to go to school every day and come back together. There are two roads to the said school. The roads are busy and there are agriculture lands adjoining both the roads. Her parents always advised her to be conscious and careful. If anything goes wrong, she has to inform her parents. She further admits that on 21.06.2016, her monthly cycle had stopped.

11. It is further submitted by the prosecution that the incident took place between 01.05.2017 to 01.08.2017, hence this appellant is not root cause for the said pregnancy. Further, the conduct of the victim is very artificial and unacceptable, since she has not revealed anything to her parents regarding her monthly cycle. The appellant and the victim are relatives. The appellant and victim visited each other's house, and even in such circumstances, she has not revealed about the stopping of her menstrual cycle. She has

not revealed on what date, month, year and time the said incident took place. But she could not say how many times the intercourse had taken place. The victim admits that for about 1 year she was in the house of her uncle at Mukandahalli before going to the Hospital along with her grandmother PW1. Further, she has revealed about her pregnancy to PW1-grandmother only before lodging the complaint. It shows that the original F.I.R is suppressed by the prosecution. It goes to the root of the matter. Further, it is admitted that when she got discharged from the Hospital, she went to the Police Station and informed them about the incident. In turn, the police have reduced the same to writing. It was read over and her signature was obtained. It also shows that before lodging the complaint by PW1, the victim has set the law into motion. She further admits that she got the complaint typed near Sharadha theater and she does not know the name of the person who typed the complaint. She has deposed that, about 2-3 times she has given statements before the Magistrate. She has not received any injuries on her body. She further admits that she went to tour along with her teachers, girls and boys, after they came back from the tour she got the abdominal pain. The conduct of this witness is very artificial, inconsistent and

uncorroborated with the evidence of other witnesses. Hence, her evidence is required to be rejected as not acceptable and reliable.

12. It is further submitted that the learned Sessions Judge committed grave error in relying upon the evidence of PW3-Nagaraj, father of the victim. He has deposed that, in 2017, the victim was studying in 8th standard. The victim complained about her stomach pain, hence he informed the same to his mother, thereafter the victim was taken to Hospital and Doctor said that she was pregnant. The victim girl told him that the appellant is the root cause to it. In the cross-examination, he admitted that other boys and girls would accompany the victim to school in the bus. He does not know the date of birth of the victim and he has not given any form to the school at the time of admission. The victim used to tell to her mother even the minor ailments like headache, fever etc. If that being the case, if the victim not revealing about the alleged incident to her parents, creates grave suspicion as to the case of the prosecution. Hence, the evidence of this witness is not acceptable and cogent. His evidence is hearsay and not admissible under section 60 of Indian Evidence Act.

13. It is further submitted that the learned Sessions Judge committed grave error in relying upon the evidence of PW4-Venkataswamy, who is the uncle of the victim. He has deposed that, victim told him that on 28.11.2017, his brother PW3, called him through phone and informed that the victim has stomach pain and his brother asked him to come and see the victim. Then he has sent his mother to the house of PW4, after enquiry he came to know that the victim is suffering from stomach pain. His mother also revealed that the victim is pregnant and the appellant is the root cause for it. In the cross-examination, he admitted that he only came to know about the pregnancy through his mother. Hence, his evidence is hearsay and not admissible under Indian Evidence Act. He visited the victim's house during her pregnancy and yet she has not revealed anything. He would have not known who is the root cause of it.

14. It is further submitted that PW5-Muniraju, PW6-Anjinappa and PW8-Venu are the alleged Panch witnesses to the spot mahazar Ex.P2. All of them have turned hostile. None of them admitted that the police conducted the spot mahazar in their presence at the place shown by the victim. Hence, the prosecution failed to prove the place of occurrence. The learned

Sessions Judge committed grave error in relying upon the evidence of PW7-Pradeep Kumar, who is the Head Master of Arabikotthanuru High School. He has issued age certificate as per the records of admission register extract-Ex.P6 and has stated that her date of birth is 03.02.2004. In the cross-examination, he has admitted that he was not the author of the said admission register extract. He further admitted that at the time of admission, the parents of the children should furnish the birth certificate, but in the register maintained in their school there is no such entry regarding the birth certificate of the victim. Hence, the prosecution has not proved the date of birth of the victim that she is a minor. The law of the land is that, to prove the date of birth of the victim, the Head Master who made the entry in the primary school admission register extract is required and the prosecution is required to collect the birth certificate from the primary school.

15. It is further submitted that the learned Sessions Judge committed grave error in relying upon the evidence of PW9-Dr.Byappa Reddy, who is a Radiologist at SNR Hospital, Kolar. He has deposed that, on 02.12.2017, he examined the victim and stated that the age of the victim is more than 13 years and less than 15 years, accordingly he has issued the

certificate as per Ex.P7. In the cross-examination, he has admitted that he has not given Ex.P7 and also he has not written its contents. He cannot say the probative value of the said document. In the scanning report-Ex.P8, there is no full address to show that it belongs to the victim. Hence, the said fact is not proved by the prosecution.

16. It is further submitted that the learned Sessions Judge committed grave error in relying upon the evidence of PW10-Manjunatha, who is the Junior Engineer, PWD, Kolar. In his evidence, he has stated that on 22.12.2017, as per the request made by the police, he has visited the spot and prepared a sketch as per Ex.P9. The said place is adjoining Bengaluru-Madras main road. Hence, chances of occurrence of alleged offence in the said place is remote. PW11-Rahul is a Village Accountant, who issued RTC pertaining to Sy.No.64/1, which belongs to Krishnappa. The learned Sessions Judge committed grave error in relying upon the evidence of PW12-Doctor D.K. Ramesh, who has medically examined the appellant and issued report as per Exs.P12 and P13. In the cross-examination, he admitted that the Government has issued a proforma to issue the certificate, but he has not issued as per the proforma and he has also not mentioned on what

basis he came to know that the appellant is mentally and physically fit to have the intercourse and also about the tests conducted to know that the appellant is potent. It shows that he has not examined the appellant.

17. It is further submitted that the learned Sessions Judge committed grave error in relying upon the evidence of PW15-Doctor Mamatha, who has collected the sample blood from the appellant on 28.12.2017, to send the same to FSL. In the cross-examination, she admitted that to send the blood samples of the victim and appellant, she has no definite guidelines and also she admits that there are certain procedural aspects to collect the blood samples to send to FSL. If they have not adopted the guidelines, then there are chances of report going wrong. To collect the blood samples, the DNA center has given the forms by showing who will collect the blood. She further admitted that she has not collected the blood samples, one Narayanaswamy said to be the Lab Technician, had collected the blood samples. At the time of collecting the blood samples, they should wear the mask and gloves. She also not obtained the signature of the Lab Technician. To send it to the DNA test, minimum 5 ml blood should be collected, if not it may lead to wrong report. Further,

she admitted that at the time of collecting blood samples there should be 2 witnesses. The signatures and addresses of the said witnesses are supposed to be mentioned in the said application and the said blood should be preserved in a prescribed container. But, it is not mentioned in Ex.P14. The way in which she has given the evidence is not reliable and acceptable, hence, her evidence is required to be rejected in toto.

18. It is further submitted that PW16-C.S.Nagaraj, Head Constable had took the appellant to SNR Hospital on 28.12.2017, he brought the report said to have been given by the Doctor. In the cross-examination, he admitted that he did not know at what time he has produced the appellant before the Doctor and he was standing outside the room when the Doctor was examining the appellant. PW17- Mamatha, a Women Police Constable had took the victim to the SNR Hospital on 01.12.2017 and on the next day she brought back the victim and produced before the Investigating Officer. On 05.12.2017, she brought 6 articles and the report, said to have been given by the Doctor and produced before the Investigating Officer. In the cross-examination, she admitted that at the time of taking the victim to the SNR Hospital, the

Investigating Officer has not given the memo. The Doctor has not given any report to her. She has also not given her report to Investigating Officer. On the articles there was no seal and date from the Hospital. Their evidence does not inspire confidence, since it is not corroborative with the victim and the Investigating Officer.

19. It is further submitted that the learned Sessions Judge committed grave error in relying upon the evidence of PW18-Dr.Santhosh Prabha. He deposed on 03.04.2018, he was summoned to 1st Additional District & Sessions Judge, Kolar, he collected the blood samples of the victim and the appellant and preserved in E.D.T.A tube, and also collected sputum, and oral mucosa swab and handed over to Investigating Officer. He has identified the document as Ex.P3. In the cross-examination, he admitted that if the blood samples are not properly preserved, chances of leading to false report cannot be ruled out. Hence, the evidence of this witness is required to be rejected.

20. It is further submitted that the learned Sessions Judge committed grave error in relying upon the evidence of PW19-Dr.Seema. On 01.12.2017, the Kolar Rural police have produced the victim before her, she tested the victim and stated that the victim is 23 weeks pregnant. Her report is

marked as Ex.P16. On 12.03.2018 she got admitted again. On 22.03.2018, she underwent cesarean and gave a birth to boy child. In the cross-examination, she admitted that the victim has not stated the name of the appellant and nothing regarding the appellant causing pregnancy has been mentioned in the discharge summary-Ex.P17. The learned Sessions Judge committed grave error in relying upon the evidence of PW20-Shivaraju, who received the complaint on 30.11.2017 at 6.00 P.M., and registered a case in Crime No.510/2017 and forwarded to the jurisdictional Magistrate. The F.I.R is marked as Ex.P18. Thereafter, he handed over the further investigation to PW22- Putta Obalareddy. K.O. On 02.12.2017, the Investigating Officer has deputed him to arrest the accused. Accordingly, he arrested the appellant on the same day and produced him before the Investigating Officer and gave the report as per Ex.P18. In the cross-examination, he admits that his staff has identified the L.T.M of the complainant. But he did not remember who wrote the complaint. Further, he admits that at the time of lodging the complaint, PW1 alone came to the Police Station. But the victim and PW1 have stated that both of them went to the Police Station and lodged the

complaint. The evidence of this witness is inconsistent and uncorroborated with the evidence of other witness.

21. It is further submitted that the learned sessions judge committed grave error in relying upon the evidence of PW21-L.Purushotham, who is the Assistant Scientific officer. He has deposed that, on 04.04.2018, the Kolar Rural Police has sent 3 sealed covers in Crime No.510/2017 to the DNA department, he has examined those articles and given his report as per Ex.P20 and stated that appellant is the biological father of the child. In the cross-examination, he admitted that there is no date on the covers to show that on what date the blood samples were collected and from whom. He has not given different coding numbers on different articles. He also admits that he has not stated that those articles were preserved in the cold storage. At the time of conducting DNA examination, everything has to be mentioned in the log book and should obtain the signatures of two witnesses. Nothing is mentioned in the log book. The evidence of this witness clearly shows that he has not fulfilled the requirements of the tests as per law. Hence, the prosecution has not established as to who is the biological father of the child.

22. It is further submitted that the learned sessions judge committed grave error in relying upon the evidence of PW22-Putta Obala Reddy, who is the Police Inspector. He collected the case file from PW21 on 01.12.2017, and he has forwarded the victim to SNR Hospital along with his staff and directed his staff to arrest and produce the appellant before him. Accordingly, on 02.12.2017, the appellant was produced before him. He also recorded the statement of the victim. On 03.12.2017, visited the spot and conducted the spot mahazar. On 05.12.2017, he produced the victim before the jurisdictional Magistrate to record her statement as required under Section 164 of Cr.P.C. After collecting the documents, he has handed over the case file to PW23 Jagadish. In the cross-examination, he admitted that he has not collected the birth certificate of the victim. Further, the route in which the victim walks from her village to bus is a busy road and also there are agricultural lands adjoining to the said road. The evidence of this witness clearly goes shows that the version given by the victim is quite artificial and unbelievable.

23. It is further submitted that the learned Sessions Judge committed grave error in relying upon the evidence of PW23-Jagadish.S.R, who is Police Inspector. He has deposed

that, on 15.12.2017 he collected the case file from PW22. On 16.12.2017, he collected the birth certificate of the victim which is marked as Ex.P6. On 21.12.2017, he collected the spot sketch from the PWD Engineer which is marked as Ex.P9. On 28.12.2017, he has sought the appellant from judicial custody. He has collected the blood samples and DNA report from the victim and the appellant from SNR Hospital. After collecting all the documents, he has filed the charge sheet. In the cross-examination, he admitted that he has not collected the birth certificate of the victim and also he admits that in the spot sketch at Ex.P9, the direction given is not correct. The evidence of this witness clearly shows that the prosecution has not established the age of the victim. Until and unless the prosecution establishes the victim is a minor, conviction cannot be based on the provisions of POCSO Act and unless the birth certificate is produced, there cannot be probative value to the evidence of the victim and the other witnesses. Hence, the prosecution miserably failed to establish the prima-facie case against the appellant to attract any of the ingredients of the charges leveled against the appellant. He would further submit that the statement of the victim was not recorded by a women police, but was recorded by the Investigating Officer-Putta

Obala Reddy, which is clearly in violation of the Section 24(1) of the POCSO Act. Viewed from any angle, the Judgment of conviction and order on sentence is not sustainable in law and it is required to be interfered with by this Hon'ble court. On all these grounds, learned Counsel for the appellant prays to allow the appeal.

24. In order to substantiate his contentions, he has relied upon the following decisions:

- (1) State of Karnataka Vs. Sri. Nagesh, in Criminal Appeal No.100570/2022 (A), decided on 10.07.2025 of the Dharwad Bench of this Court,
- (2) Mohanlal Gangaram Gehani Vs. State of Maharashtra - AIR 1982 SC 839 and
- (3) Alamelu & Another Vs. State, Represented by Inspector of Police - AIR 2011 SC 715.

25. Per contra, learned High Court Government Pleader-Sri. B.Lakshman, opposed stating that the Trial Court has properly appreciated the evidence on record and convicted the accused for the alleged commission of offences and sought for dismissal of the appeal.

26. Having heard the arguments on both sides and on perusal of the materials placed before this Court, the following points would arise for my consideration:

- i. Whether the learned Sessions Judge is justified in convicting the appellant/accused for the offence punishable under Section 6 of the POCSO Act?
- ii. What order?

27. My findings to the above points are as under:-

Point No.1 : In the affirmative.

Point No.2 : As per final order

Regarding Point No.1:

28. The Circle Inspector, Kolar Rural Police, Kolar, filed the charge sheet against the accused for the offence punishable under Sections 376, 506 of IPC and Section 6 of POCSO Act, 2012.

29. The genesis of the case arise from Exhibit P1-complaint filed by the PW1-Lakshamma, the grandmother of the victim, in which it is stated as under:

"ರವರಿಂದ,

ಲಕ್ಷ್ಮಮ್ಮ ಕೋಲ ಲೀಟ್ ರಾಮಕೃಷ್ಣಪ್ಪ, 70 ವರ್ಷ, ಬೋಲಿ ಜನಾಂಗ,
ಕೂಲಿ ಕೆಲಸ, ವಾಸ ಪುಂಜದೇವನಹಳ್ಳಿ ಗ್ರಾಮ, ಕೋಲಾರ ತಾಲ್ಲೂಕು.

ಮಾನ್ಯರೇ:

ನಾನು ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ವಾಸವಾಗಿದ್ದು, ಕೂಲಿ ಕೆಲಸ ಮಾಡಿಕೊಂಡು ಜೀವನ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ. ನನಗೆ ಒಟ್ಟು ಇಬ್ಬರು ಮಕ್ಕಳಿದ್ದು, 01ನೇ ವೆಂಕಟಸ್ವಾಮಿ ಮತ್ತು 02ನೇ ನಾಗರಾಜ್ ರವರುಗಳಾಗಿದ್ದು, ವೆಂಕಟಸ್ವಾಮಿರವರು ತಮಿಳುನಾಡಿನ ಹೊಸೂರಿನಲ್ಲಿ ವಾಸವಾಗಿದ್ದು, ನಾಗರಾಜ್ ರವರು ಕೋಲಾರ ತಾಲ್ಲೂಕು ಚುಂಚದೇನಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿ ವಾಸವಾಗಿರುತ್ತಾರೆ. ಚುಂಚದೇನಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿ ನಾನು ಹಾಗೂ ನನ್ನ ಮಗನಾದ ನಾಗರಾಜ್ ಮತ್ತು ನನ್ನ ಸೊಸೆಯಾದ ಮಂಜುಳ ಮತ್ತು ಅವರ ಮಕ್ಕಳಾದ 13 ವರ್ಷದ ಕುಮಾರಿ ಸವಿತ ರವರುಗಳು ಒಟ್ಟಿಗೆ ಒಂದೇ ಮನೆಯಲ್ಲಿ ವಾಸವಾಗಿದ್ದು, ನನ್ನ ಮೊಮ್ಮಗಳಾದ ಸವಿತ ರವರು ಕೋಲಾರ ತಾಲ್ಲೂಕು ಆರಾಜಿಕೊತ್ತನೂರು ಗ್ರಾಮದ ಸರ್ಕಾರಿ ಪ್ರೌಢಶಾಲೆಯಲ್ಲಿ 8ನೇ ತರಗತಿ ವ್ಯಾಸಾಂಗ ಮಾಡುತ್ತಿದ್ದು, ನನ್ನ ಮೊಮ್ಮಗಳಾದ ಸವಿತ ರವರು ಪ್ರತಿ ದಿನ ನಮ್ಮ ಊರಿನಿಂದ ಆರಾಜಿಕೊತ್ತನೂರು ಗ್ರಾಮದ ಶಾಲೆಗೆ ನಡೆದುಕೊಂಡು ಹೋಗಿ ಬರುತ್ತಿದ್ದಳು. ನಾನು ಈಗ್ಗೆ ಸುಮಾರು ಒಂದು ತಿಂಗಳ ಹಿಂದೆ ಹೊಸೂರಿನಲ್ಲಿರುವ ನನ್ನ ಹಿರಿಯ ಮಗನಾದ ವೆಂಕಟಸ್ವಾಮಿ ರವರ ಬಳಿ ಹೋಗಿ ನಾನು ಅಲ್ಲಿಯೇ ಇದ್ದೆ. ನಂತರ ಈಗ್ಗೆ ಸುಮಾರು 3 ದಿನಗಳ ಹಿಂದೆ ನಾನು ಹೊಸೂರಿನಲ್ಲಿದ್ದಾಗ ನನ್ನ ಚಿಕ್ಕಮಗನಾದ ಚುಂಚದೇನಹಳ್ಳಿ ಗ್ರಾಮದ ವಾಸಿಯಾದ ನಾಗರಾಜ್ ರವರು ನನಗೆ ಫೋನ್ ಮಾಡಿ ನನ್ನ ಮಗನಾದ ಸವಿತ ರವರಿಗೆ ಈಗ್ಗೆ ಸುಮಾರು 3 ದಿನಗಳಿಂದ ಹೊಟ್ಟೆನೋವು ಎಂದು ಹೇಳುತ್ತಿದ್ದಾಳೆ ಬಂದು ಏನೋ ಅವಳನ್ನು ನೋಡಿಕೊಂಡು ಹೋಗುವಂತೆ ನನಗೆ ವಿಚಾರ ತಿಳಿಸಿದರು.

ನಂತರ ನಾನು ದಿನಾಂಕ: 29/11/2017 ರಂದು ಹೊಸೂರಿನಿಂದ ನಮ್ಮ ಸ್ವಂತ ಊರಾದ ಚುಂಚದೇನಹಳ್ಳಿ ಗ್ರಾಮಕ್ಕೆ ಬಂದು ನನ್ನ ಮೊಮ್ಮಗಳಾದ ಸವಿತ ರವರನ್ನು ವಿಚಾರ ಮಾಡಿದಾಗ ಸವಿತ ರವರು ನನಗೆ ಸುಮಾರು 4-5 ದಿನಗಳಿಂದ ಹೊಟ್ಟೆನೋವುಂಟುತ್ತಿದೆ ಎಂದು ತಿಳಿಸಿದಳು. ಆಗ ನಾನು ಸವಿತ ರವರಿಗೆ ನಿನಗೆ ತಿಂಗಳ ತಿಂಗಳ ಸರಿಯಾಗಿ ಮುಟ್ಟು ಆಗ್ತಾ ಇದ್ದೀಯೆ ಎಂದು ಕೇಳಿದರೆ ಸವಿತ ರವರು ನಾನು 5 ತಿಂಗಳಿಂದ ಮುಟ್ಟು ಆಗಿಲ್ಲ ಎಂದು ಹೇಳಿದಳು. ಆಗ ನಾನು ಆಕೆಯ ಹೊಟ್ಟೆಯನ್ನು ನೋಡಲಾಗಿ ಹೊಟ್ಟೆ

ಮುಂದೆ ಬಂದಿರುವ ಹಾಗೆ ತಿಳಿಯಿತು. ಆಗ ನನಗೆ ಅನುಮಾನ ಬಂದು ಸಲ್ಲಿ ಸವಿತ ರವರನ್ನು ಕೂರಿಸಿಕೊಂಡು ವಿಚಾರಿಸಿದಾಗ ನಾನು ಈಗ್ಗೆ ಸುಮಾರು 7 ತಿಂಗಳಿಂದ ಶಾಲೆಯಿಂದ ಮನೆಗೆ ನಡೆದುಕೊಂಡು ಬರುವಾಗ ದಾರಿ ಮಧ್ಯದಲ್ಲಿ ನಮ್ಮ ಗ್ರಾಮದ ನಮ್ಮ ಸಂಬಂಧಿಯಾದ ನಾರಾಯಣಸ್ವಾಮಿ @ ಚೆನ್ನೋಡು @ ಚೆಕ್ಕು ಬಿನ್ ನಂಜುಂಡಪ್ಪ ಎಂಬವರು ಆಗಾಗ ನನ್ನನ್ನು ಬಲವಂತವಾಗಿ ತೋಪುಗಳ ಒಳಗೆ ಎಳೆದುಕೊಂಡು ಹೋಗಿ ನನ್ನ ಮೇಲೆ ಭಲವಂತವಾಗಿ ಅತ್ಯಾಚಾರ ಮಾಡಿ ನೀನು ಈ ವಿಚಾರ ಯಾರಿಗಾದರೂ ಹೇಳಿದರೆ ನಿನ್ನನ್ನು ಇಲ್ಲಿಯೇ ಸಾಯಿಸಿ ಮುಚ್ಚಿ ಹಾಕುತ್ತೇನೆ. ಎಂದು ಭಯಪಡಿಸಿ ಕಳುಹಿಸುತ್ತಿದ್ದನು. ಎಂದು ಸವಿತ ರವರು ತಿಳಿಸಿದಳು. ನಂತರ ನಾನು ನನ್ನ ಮೊಮ್ಮಕ್ಕಳನ್ನು ಈ ದಿನ ಕೋಲಾರ ಎಸ್ ಎಸ್ ಆರ್ ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ವೈದ್ಯರ ಬಳಿ ಪರೀಕ್ಷಿಸಿದಾಗ ವೈದ್ಯಾಧಿಕಾರಿಗಳು ನನ್ನ ಮೊಮ್ಮಕ್ಕಳು 7 ತಿಂಗಳ ಗರ್ಭಿಣಿ ಎಂದು ತಿಳಿಸಿದರು.

ನನ್ನ ಮೊಮ್ಮಕ್ಕಳಾದ ಅಪ್ರಾಪ್ತ ಸುಮಾರು 13 ವರ್ಷದ ಕುಮಾರಿ ಸವಿತ ರವರ ಮೇಲೆ ಭಲವಂತವಾಗಿ ಅತ್ಯಾಚಾರ ಮಾಡಿ 7 ತಿಂಗಳ ಗರ್ಭಿಣಿಯಾಗಿರುವುದಕ್ಕೆ ಕಾರಣರಾಗಿರುವ ನನ್ನ ಸಂಬಂಧಿ ಸುಮಾರು 20 ವರ್ಷದ ನಾರಾಯಣಸ್ವಾಮಿ @ ಚೆನ್ನೋಡು @ ಚೆಕ್ಕು ಬಿನ್ ನಂಜುಂಡಪ್ಪ ರವರ ವಿರುದ್ಧ ನಮ್ಮ ಮನೆಯಲ್ಲಿರುವ ನನ್ನ ಮೊಮ್ಮಕ್ಕಳನ್ನು ವಿಚಾರಣೆ ಮಾಡಿ ಸೂಕ್ತ ಕಾನೂನು ರೀತ್ಯಾ ಕ್ರಮ ಜರುಗಿಸಲು ಕೋರುತ್ತೇನೆ."

30. On the basis of this complaint, on 30.11.2017, the Sub-Inspector, Rural Police Station, Kolar registered the case in Crime No.510/2017 against the accused for the offence punishable under Section 376, 506 Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act, 2012. He submitted the FIR to the Court on the same day, at 09.50 p.m. as per Exhibit P18. Thereafter, the police have

visited the spot and conducted spot mahazar-Exhibit P2 on 03.12.2017, and produced the accused before the Court for recording statement under Section 164 of Cr.P.C. Accordingly, statement was recorded as per Exhibit P5. The Investigating Officer has also obtained the DNA report as per Ex.P20. The DNA report reveals that the accused's blood sample sent in Item No.1 is included from the biological father and the victim D/o Nagaraj, sample blood sent in Item No.2 included from the biological mother of boy child, sample blood sent in Item No.3.

31. PW1-Lakshamma has deposed in her evidence as to the contents of complaint.

32. PW2-victim has deposed in her evidence that PW1 is her grandmother, CW3 is her father, and CW4 is her mother. She knows the accused. Her date of birth is 03.02.2004. In the year 2017, she was studying in 8th standard in Arabikotthanuru High School. She was going to the school by walk till Chunchadenahalli gate and from there she would take a bus. About 1 year 9 months ago, while returning home from school, she alighted from bus at the gate. At that time, accused came and dragged her into a nearby eucalyptus grove and asked her to remove her clothes for which she refused. The accused

threatened her by saying that he will kill her and her parents and removed her clothes and committed rape on her. He also threatened to harm her and her parents if she reveals the incident to anybody. After 2 to 3 months, accused committed rape on her again, in the same manner and at the same place. Being unable to tolerate the stomach pain, she informed her mother. Her grandmother-CW1 was called from Hosuru, to whom she revealed about the incident. On 30.11.2017, she was taken to SNR Hospital, Kolar, and doctor examined her. Police enquired her. She told them about the incident. Police took her to the place of incident and conducted mahazar as per Exhibit P2 at the place shown by her. Thereafter, she was shifted to observation home at KGF. After 3 months, she was taken to SNR Hospital, Kolar, where she gave birth to boy child. In the presence of Court, her sample blood was taken for investigation by executing Identification Form - Exhibit P3. PW2 has identified photograph of the child in the Identification Form - Exhibit P4. She gave her statement before the Court as per Ex.P5.

33. PW3-Nagaraja is the father of the victim. He has deposed in his evidence that in the year 2017 victim was studying in 8th standard. Victim complained stomach pain

hence, he informed the same to his mother. Thereafter, victim was taken to the hospital, where the doctor examined and told that she was pregnant. Victim girl told that accused committed rape on her in the eucalyptus grove, while she was returning to home from school.

34. PW4-Venkataswamy is the uncle of victim girl, has deposed supporting the prosecution case stating that, victim girl told him that, accused committed rape on her and in the eucalyptus grove, while returning to home from the school and threatened her not to reveal the same to anybody. Victim was admitted to the hospital where doctor revealed that Victim was pregnant.

35. PW5-Muniraju, PW6-Anjinappa and PW8-Venu are the panchas to the spot mahazar Exhibit P2. They have stated that on 03.12.2017, police have obtained their signatures near Chunchadenahalli gate. But all these witnesses have not supported the case of the prosecution and treated as hostile witnesses.

36. PW7-Pradeep Kumar C.N. Headmaster of Arabikotthanuru Government High School has deposed that, at the request of police has issued certificate regarding the date of

birth of the victim as per Exhibit P6 and as per the school records date of birth of the victim is 03.02.2004.

37. PW9-Dr.Bayyappa Reddy, in his evidence stated that on 02.12.2017 he has examined and subjected the victim to scanning test and issued report as per Exhibits P7 and P8, stating that victim was aged about 13 to 15 years and she was pregnant for 23 weeks.

38. PW10- Manjunatha is the Junior Engineer, PWD Kolar, has deposed as to the rough sketch prepared by him as per Exhibit P9 on the spot.

39. PW11- Rahul, Village Accountant has deposed in his evidence as to the issuance of RTC extract pertaining to land bearings Sy.No. 64/1 of Chunchadenahalli Village belongs to A. Krishnappa as per Exhibit P11.

40. PW12-Dr. D.K. Ramesh, who has medically examined the accused and issued his report as per Exhibits P12 and 13 stating that there was no impediment for the accused to perform sexual intercourse.

41. PW13 - Narayanaswamy is the Head constable, who has escorted the accused to the hospital and Court.

42. PW14-Aleefa is the WPC who escorted the victim to the hospital for medical examination and to the Court for recording statement under Section 164 of Code of Criminal Procedure.

43. PW15-Dr. Mamata has deposed in her evidence that she has collected the sample blood from the accused on 28.12.2017. At the time of drawing her blood identification Form Exhibit P14 was executed in her presence.

44. PW16-C.S.Nagraj, Police Constable has deposed in his evidence that he has escorted the accused to the hospital for medical examination.

45. PW17-Mamata, WPC-357 in her evidence stated that she has escorted the victim to the hospital for medical examination and transported the materials collected by the doctor from the victim to Investigating Officer.

46. PW18-Dr.Santhosh Prabha, the doctor has deposed that on 03.04.2018 he has collected the sample blood from accused, victim and her child in the presence of Court. He has executed the identification forms of the victim, her child and the accused as per Exhibits P3, P4 and P5 and handed over the

sample blood to Investigating Officer. He has also collected oral Mucus Swab from the said persons and handed over the same to the Investigating Officer.

47. PW19 Dr. Seema, is the doctor has deposed in her evidence that on 01.12.2017 victim was brought before her by police. On examination, it was found that victim was pregnant for 23 weeks. On 12.03.2018, victim was admitted to the hospital for delivery. The victim gave birth to a boy child. She has issued report as per Exhibit P16 and discharge summary as per Exhibit P17.

48. PW20-Shivaraju.S, Sub-inspector of Police, PW22-Putta Obalareddy.K.O, PW23-Jagadeesha.S.R, have deposed as to their respective investigation.

49. PW21-L.Purushotham, is the Assistant Director, FSL Bangalore has stated that on 04.04.2018 he received three sealed articles from Ananda, PC-159 of Kolar Rural Police Station for DNA Test. Accordingly, he has registered the same as DNA No.146/2018. He has followed proper procedure and opened the same and found that article No.1 was containing sample blood of accused- Narayanaswamy collected by the doctor on 03.04.2018 in the presence of CJM, Kolar. Article

No.-2 contained sample blood of victim collected by the doctor on 03.04.2018 in the presence of CJM, Kolar. Article No.3 was containing sample blood of boy child of the victim collected by the doctor on 03.04.2018 in the presence of CJM, Kolar. He has analysed the DNA profiles and found that genes in the DNA of blood sample of the male child were tallying with the genes in the DNA of blood sample of the accused and victim. As per his opinion, accused is the biological father of the child born to the victim. He has issued his report as per Exhibit P20. He has identified his signature on identification form Exhibits P3, P4 and P15.

50. With regard to the age of the victim is concerned, the victim has clearly stated that her age was 13 years, at the time of alleged commission of offence, same was deposed by the victim, while recording statement under Section 164 of Cr.P.C. Whereas in examination-in-chief recorded on 23.02.2018, she has stated that her age is 15 years. The prosecution has produced the certificate as per Exhibit P7 and also adduced the evidence of PW9-Dr.Bayyappa Reddy who has deposed that the age of the victim was 13 to 15 years and she was pregnant for 23 weeks at the time of examination. According to law, during the course of evidence of victim, the counsel for the accused

has not disputed the age of the victim. Even during the course of examination of PW9-Dr. Bayyappa Reddy, Radiologist, has not disputed the certificate issued by this doctor as per Exhibits P7 and P8. Apart from this, the prosecution has produced the school certificate as per Exhibit P6, which reveals that the date of birth of the victim was 03.02.2004. The Headmaster of the Government High School, Arabikotthanuru, examined as PW7 who has deposed in his evidence as to the contents of Exhibit P6. The trial Court has observed the same in the judgment and opined that the document issued by the school authorities can also be relied upon in order to ascertain the date of birth of the victim. Further it is observed that, appreciating the school certificate in comparison with the age estimation certificate based on clinical examination test Exhibit P7, would clearly indicate that the victim was minor as on the date of incident. It is also observed that, it is not the defence of the accused that victim was not minor on the date of incident or the document produced before the Court. Either, the date of birth of victim is fabricated or the real date of birth of victim is different from Exhibit P6 and P7. Accordingly, the trial Court has held that the victim was minor as on the date of incident, relying on the

judgment of Hon'ble Apex Court, in the case of **Jarnail Singh v.State of Haryana** reported in **(2013) 7 SCC 263**.

51. On re-appreciation of the evidence on record, I do not find any error in holding that the victim was a child as defined under Section 2(d) of Protection of Children from Sexual Offences Act. Accordingly, I hold that there is no force in the argument submitted on behalf of the accused counsel in this regard.

52. With regard to the DNA report is concerned, the learned counsel for the appellant would vehemently submit that the sample blood was not taken as per the guidelines issued by the concerned authority and while taking sample blood the concerned medical officer has not followed the proper due procedure or had preserved same in the manner prescribed under rules. In this regard, it is also relied on the decision of the Division Bench of this Court in the case of the **State of Karnataka v. Nagesh** in **Criminal Appeal No.100570/2022** decided on **10.07.2025**. In this regard, on perusal of para No.42 of the judgment, it is seen that the trial Court has observed that, this Court is not relying only on the DNA report. But this Court do not find any reason to disbelieve the

corroborative evidence of victim girl, which is supported by the evidence of other witnesses and Exhibit P20-DNA report. Since the trial Court has not convicted the accused solely on the DNA report, it is not necessary to discuss much about the procedure in taking blood samples, preservation and also its DNA examination. Therefore, the ruling cited by the learned counsel for the accused will not enure to his benefit.

53. A careful examination of the entire evidence on record, it is crystal clear that except denial, the accused has not made out any specific defence. Admittedly, accused is distant relative of victim. In the cross-examination of PW1, it was suggested that there was ill-will between the family of the accused and family of the complainant, which is denied. Accordingly, the accused has not placed any materials regarding the enmity/ill-will between the accused and the family of the victim. The evidence of victim is trustworthy and believable. There is a statutory presumption under Section 29 of the Protection of Children from Sexual Offences Act that where a person is prosecuted for committing, abetting or attempting to commit any offence under Section 3, 5, 7 and Section 9 of the Act, the Court shall presume that such person has committed or abetted or attempted to commit the offence,

as the case may be, unless the contrary is proved. Section 30 of the POCSO Act, 2012, contemplates that in any prosecution, for any offence under this Act, which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state, but shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. In the explanation to Section 30 of the Act, the culpable mental states defined, which includes intention, motive, knowledge of a fact and the belief in, or reason to believe a fact.

54. In the case on hand, the evidence placed by the prosecution proves that the accused commits aggravated penetrative sexual assault, which is punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012. Accordingly, the prosecution has proved its case beyond all reasonable doubt and trial Court has rightly convicted the accused for the offence under Section 376 of Indian Penal Code and Section 6 of POCSO Act, 2012 and rightly passed the sentence to undergo rigorous imprisonment for a period of 10 years with fine of Rs.10,000/- for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012. I do not find any error/illegality in the impugned

judgment of conviction and order on sentence passed by the trial Court. Hence, I answer point No.1 in Affirmative.

Regarding Point No.2:

55. For the aforesaid reasons and discussions, I proceed to pass the following:

ORDER

- i) Appeal is dismissed.
- ii) The Judgment of conviction and order on Sentence passed by the Addl. District and Session Judge, FTSC-I (POCSO), Kolar dated 29.10.2021 is confirmed.
- iii) Registry is directed to send the copy of this Judgement along with the Trial Court records to the concerned Court.

**Sd/-
(G BASAVARAJA)
JUDGE**

DL/KBM
CT:JL